

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
D E P A R T M E N T O F H E A L T H

Safe and Healthy Lives in Safe and Healthy Communities

STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS,
DEPARTMENT OF HEALTH,
BOARD OF MEDICAL LICENSURE
AND DISCIPLINE

No. C96-139

In the matter of:
Martin Posner, M.D.

CONSENT ORDER

Pursuant to Section 5-37-5.1 of the General Laws of the State of Rhode Island, 1956, as amended, a notification was filed with the Board of Medical Licensure and Discipline (hereinafter referred to as "Board") by the State of New York which states that Martin Posner, M.D., Respondent, violated state and federal law relative to controlled substances. An investigation was conducted by Investigating Committee I, so called, of the Board.

The following constitutes the Investigating Committee's Findings of Facts with respect to the professional performance of the Respondent.

Findings of Fact

1. The Department of Health was notified that the Respondent admitted that he was convicted in the United States District Court, Eastern District of New York, United States Courthouse,

Hauppauge, New York, of Acquiring Possession of a Controlled Substance, a felony, in violation of 21 USC 843(a)(3).

"On or about June 16, 1987, the Respondent knowingly and intentionally obtained and acquired possession of a substantial quantity of Demerol, a Schedule II narcotic drug controlled substance, through misrepresentation, fraud, deception and subterfuge, in that he wrote multiple prescriptions and presented them to pharmacies in the name of Mae Hochman and thereby obtained and acquired the drug for his own use.

On or about April 21, 1989, the Respondent was sentenced as follows: three years probation and a special assessment fine of \$50.00. Special conditions of probation required that he participate in drug and mental health treatment as directed by the Probation Department; that he not self prescribe drugs; and to perform 300 hours of community service as directed by the probation department."

2. The Respondent admitted guilt of a violation of N.Y. Educ. Law Sec. 6530(9)(a)(ii) (McKinney Supp. 1994).

3. The Board of Medical Licensure and Discipline alleges that the Respondent has violated Rhode Island General Laws 5-37-5.1 (21) for acts in the State of New York which are grounds for discipline in Rhode Island.

The parties agree as follows:

(1) The Respondent is a physician who is licensed in the State of Rhode Island, allopathic license number 4290.

(2) Respondent admits to the jurisdiction of the Board and hereby agrees to remain under the jurisdiction of the Board.

(3) Respondent has read this Consent Order and understands that it is a proposal of Investigating Committee I of the Board and is subject to the final approval of the Board. This Consent Order is not binding on the Respondent until final ratification by the Board.

(4) Respondent hereby acknowledges and waives:

- a. The right to appear personally or by counsel or both before the Board;
- b. The right to produce witnesses and evidence in his behalf at a hearing;
- c. The right to cross examine witnesses;
- d. The right to have subpoenas issued by the Board;
- e. The right to further procedural steps except for those specifically contained herein;
- f. Any and all rights of appeal of this Consent Order;
- g. Any objection to the fact that this

Consent Order will be presented to the Board for consideration and review;

h. Any objection to the fact that it will be necessary for the Board to become acquainted with all evidence pertaining to this matter in order to review adequately this Consent Order;

i. Any objection to the fact that potential bias against the Respondent may occur as a result of the presentation of this Consent Order.

(5) If the Consent Order is not accepted by the Respondent, the Investigative Committee will recommend to the Board that an Administrative Hearing be scheduled with respect to any and all acts of alleged unprofessional conduct.

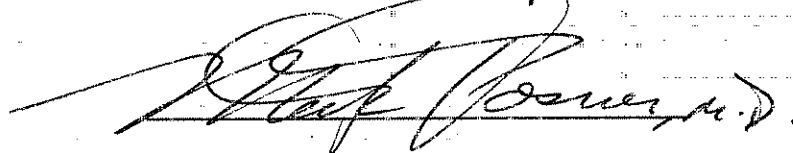
(6) Acceptance of this Consent Order constitutes an admission by the Respondent of the facts set forth herein.

(7) This Consent Order shall become part of the public record of this proceeding once it is accepted by all parties and by the Board. It shall be published as the Board, in its exercise of its discretion, shall determine.

(8) Failure to comply with this Consent Order, when signed and accepted, shall subject the Respondent to further disciplinary action.

(9) Respondent voluntarily accepts the Board's finding of unprofessional conduct. Respondent's license to practice medicine in the State of Rhode Island is hereby placed on probation until notification is received from New York that the Respondent has successfully completed the terms of the Consent Order entered into with New York. Additionally, the Board adopts the sanctions imposed in the New York. The terms of probation outline in "Exhibit B" of the New York Order are incorporated and attached herein and are given full faith and credit by the State of Rhode Island.

Signed this 31st day of March 1997.



Martin Posner, M.D.

Ratified by the Board of Medical Licensure and Discipline at a meeting held on April 9, 1997.



Patricia A. Nolan, MD, MPH
Director of Health
Chairperson
Board of Medical Licensure and
Discipline

EXHIBIT "B"
TERMS OF PROBATION

1. MARTIN POSNER, M.D., during the period of probation, shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by his profession;
2. That Respondent shall submit written notification to the New York State Department of Health (NYSDOH), addressed to the Director, Office of Professional Medical Conduct, New York State Health Department, Corning Tower Building, 4th Floor, Empire State Plaza Albany, New York 12237 of any employment and practice, of Respondent's residence and telephone number, of any change in Respondent's employment, practice, residence, or telephone number within or without the State of New York;
3. Respondent shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that Respondent has paid all registration fees due and owing to the NYSED and Respondent shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by Respondent to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, no later than the first three months of the period of probation;
4. Respondent shall submit written proof to the NYSDOH, addressed to the Director, Office of Professional Medical Conduct (OPMC), as aforesaid, that 1) Respondent is currently registered with the NYSED, unless Respondent submits written proof that Respondent has advised DPLS, NYSED, that Respondent is not engaging in the practice of Respondent's profession in the State of New York and does not desire to register, and that 2) Respondent has paid any fines which may have previously been imposed upon Respondent by the Board or by the Board of Regents; said proof of the above to be submitted no later than the first two months of the period of probation;
5. Respondent shall comply with all terms, conditions, restrictions, and penalties to which he is subject pursuant to the order of the Board, and shall bear all costs of said compliance.
6. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by the State of New York. This includes but is

not limited to the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non renewal of permits or licenses (Tax Law section 171(27); State Finance Law section 18; CPLR section 5001; Executive Law section 32).

7. So long as there is full compliance with every term herein set forth, Respondent may continue to practice his or her aforementioned profession in accordance with the terms of probation; provided, however, that upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of the Office of Professional Medical Conduct and/or the Board may initiate a violation of probation proceeding and/or such other proceeding against Respondent as may be authorized pursuant to the Public Health Law.
8. Respondent shall remain drug and alcohol free.
9. Respondent shall submit semi-annual declarations to the OPMC attesting that he remains drug and alcohol free.
10. Respondent's continued recovery shall be monitored by a health care professional ("monitor") designated or approved by the Director of OPMC or a successor monitor who must be similarly designated or approved by the Director of OPMC.
11. At the request of the monitor, Respondent shall submit to random, unannounced, observed urine screens for the presence of alcohol or drugs. The monitor shall submit in writing to the Director of OPMC the results of those screens. The minimum frequency of the screens shall be monthly for the first six months and thereafter at the discretion of the monitor with the approval of OPMC.
12. Respondent shall meet in person with a staff member of the OPMC at least once a year.
13. The Office of Professional Medical Conduct reserves the right to require that Respondent submit to an independent chemical dependency evaluation every six months, or as necessary, to be performed by a licensed health care professional designated or approved by the Director of OPMC.